

PJS:MJB:all

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

NORMAN SHELTON,	:	CIVIL NO. 3:cv-11-1618
Plaintiff	:	
	:	(Complaint Filed 08/30/2011)
	:	
v.	:	
	:	(Nealon, J.)
KANE, et al.,	:	
Defendants	:	Filed Electronically

UNOPPOSED MOTION FOR ENLARGEMENT OF TIME

The United States of America,¹ moves the Court for an enlargement of time, pursuant to Fed. R. Civ. P. 6(b), in which to file a brief in opposition to Plaintiff's Motion to Certify Class (Doc. No. 13). In support thereof, the United States avers the following:

¹ The United States of America submits this motion in lieu of the individual Defendants, who are presently in the process of obtaining approval for representation by the United States Attorney's Office as set forth in 28 C.F.R. § 50.15, et seq. If and when representation is authorized by the Department of Justice Civil Division, the United States Attorney's Office may then undertake a full and traditional attorney-client relationship with the individual employees.

1. This is a combined Bivens,² Federal Tort Claims Act,³ and class action lawsuit brought by and through counsel for Norman Shelton, a federal prisoner who is currently incarcerated at the United States Penitentiary in Lewisburg, Pennsylvania (“USP Lewisburg”).
2. The Complaint names as defendants the United States, 21 current or former employees of the Federal Bureau of Prisons (“BOP”), and unidentified John Doe corrections officers.
3. Shelton’s Complaint was filed and the Summons issued on August 30, 2011.
4. The United States Attorney’s Office and the identified individual defendants, were served with the Summons and Complaint on October 12, 2011.
5. The United States requested and was granted an enlargement of time until February 10, 2012, to file a response to the allegations of the Complaint.
6. On December 9, 2011, Plaintiffs filed a motion seeking class certification in this case, as well as a brief in support of the motion.

² Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

³ Federal Tort Claims Act (“FTCA”), 28 U.S.C. §2671 et seq.

7. Defendants' brief in opposition to Plaintiff's motion for class certification is currently due on or before December 27, 2011.
8. The Code of Federal Regulations provides, in pertinent part, that

a federal employee . . . may be provided representation in civil, criminal, and Congressional proceedings in which he is sued, subpoenaed, or charged in his individual capacity, . . . when the actions for which representation is requested reasonably appear to have been performed within the scope of the employee's employment and the Attorney General or his designee determines that providing representation would otherwise be in the interest of the United States....

28 C.F.R. § 50.15(a).

9. Section 50.15(a) sets forth the procedures for obtaining representation by a Department of Justice attorney such as the undersigned. In the instant case, each of the individual defendants is required to submit a written request for representation to legal staff at the employee's institution. The institution's legal department then processes the paperwork and sends it directly to the Civil Division, the litigating division of the United States Department of Justice. 28 C.F.R. § 50.15(a).
10. If and when representation is authorized by the Civil Division, Justice Department attorneys undertake a full and traditional attorney-client relationship with the employees.

11. The Civil Division is currently in the process of reviewing each defendants' representation requests in order to determine whether to approve their request and authorize the United States Attorney's Office to represent them in this matter.
12. Without the Civil Division's approval to represent Defendants, the undersigned is unable to file a brief in opposition to the Motion for Certification of Class on behalf of Defendants.
13. The United States seeks an enlargement of time until February 10, 2010, to file a brief in opposition to Plaintiff's Motion for Certification of Class in order to allow sufficient time for the Civil Division make a determination whether to authorize representation of the 21 individual defendants by the United States, and for the United States Attorney's Office to receive notice of their determination and receive a report from BOP legal counsel to assist in responding to the Motion for Certification of Class.
14. Shelton will not be prejudiced by this enlargement of time.

15. Undersigned counsel certifies that he sought Plaintiff's concurrence with this motion pursuant to M.D. Pa. L.R. 7.1. Plaintiff concurs with this motion for enlargement of time.

WHEREFORE, the United States moves the Court for an enlargement of time until February 10, 2012, to file a brief in opposition to Plaintiff's Motion for Certification of Class.

Respectfully submitted,

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Date: December 27, 2011

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on December 27, 2011, she served a copy of the attached

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via the Court's Electronic Case Filing System ("ECF") and that the Addressee(s) listed below are filing users under the ECF system. Upon the electronic filing of a pleading or other document, the ECF system will automatically generate and send a Notice of Electronic Filing to all filing users associated with this case. Electronic service by the Court of the Notice of Electronic Filing constitutes service of the filed document, and no additional service upon the filing user is required.

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